STATE OF MICHIGAN

COURT OF APPEALS

In re TAYLOR-LEE/REDMOND/REDMOND-HOUSER, Minors.

UNPUBLISHED
April 12, 2018

No. 340200
Wayne Circuit Court
Family Division
LC No. 15-519838-NA

Before: SAWYER, P.J., and HOEKSTRA and MURRAY, JJ.

PER CURIAM.

Respondent-mother appeals as of right the trial court's order terminating her parental rights to the minor children pursuant to MCL 712A.19b(3)(c)(*i*), (c)(*ii*), (g), and (j). For the reasons explained in this opinion, we affirm in part, vacate in part, and remand for further proceedings.

Respondent has four children at issue in this case. The children were removed from respondent's home in May 2015, after the police responded to a call and discovered the children alone in respondent's apartment without supervision. The youngest child, who was approximately nine months old, had sustained a burn injury on his leg. The condition of the home was also described as "deplorable." Respondent, who had a history of mental illness, had previously received services from petitioner. The trial court exercised jurisdiction over the children in July 2015, after respondent entered a plea of no contest to the allegations in the petition. Respondent was ordered to comply with a treatment plan that included parenting classes, individual therapy, and mental health treatment. The children were placed in care with respondent's relatives. Respondent failed to benefit from services and, after more than two years, she remained unable to care for the children. In June 2017, petitioner filed a supplemental petition requesting termination of respondent's parental rights. Following a hearing, the trial court terminated respondent's parental rights under MCL 712A.19b(3)(c)(*i*), (c)(*ii*), (g), and (j).

I. RESPONDENT'S PLEA

Respondent first argues that the trial court erred by accepting her no contest plea because her diminished mental capacity prevented her from knowingly, understandably, and voluntarily entering the plea. This argument is a challenge to the validity of the trial court's exercise of jurisdiction over the children. However, it is well established that a respondent in a child protective proceeding cannot collaterally attack the trial court's exercise of jurisdiction in an appeal from the order terminating the respondent's parental rights. *In re Hatcher*, 443 Mich 426, 444; 505 NW2d 834 (1993); *In re Collier*, 314 Mich App 558, 574; 887 NW2d 431 (2016).

Rather, "[m]atters affecting the court's exercise of its jurisdiction may be challenged only on direct appeal of the jurisdictional decision[.]" *In re SLH*, 277 Mich App 662, 668 n 11; 747 NW2d 547 (2008) (quotation marks and citation omitted). In this case, the trial court assumed jurisdiction over the children on July 9, 2015. No appeal was taken from that decision. The trial court terminated respondent's parental rights following the filing of a supplemental petition, and it is from the termination of her rights that respondent now appeals. In these circumstances, respondent is barred from collaterally attacking the trial court's exercise of jurisdiction in the present appeal. See *Hatcher*, 443 Mich at 444; *SLH*, 277 Mich App at 668 n 11.

Respondent acknowledges that jurisdiction may not ordinarily be challenged in an appeal following termination of parental rights, but she maintains that this rule is not applicable in this case because she did not have an appeal as of right after the trial court assumed jurisdiction. Specifically, respondent notes that MCR 3.993(A)(1) only affords an appeal as of right from an order of disposition either (1) "placing a child under the supervision of the court" or (2) "removing the minor from the home." Respondent also cites this Court's decision in *In re McCarrick/Lamoreaux*, 307 Mich App 436, 457-459; 861 NW2d 303 (2014), wherein this Court concluded that the clause "placing a minor under the supervision of the court" pertains to juvenile delinquency proceedings and not child protective proceedings. Thus, according to respondent, she only had an appeal as of right from an order removing the children from her home. And, because the children were removed from her home before she entered her plea, respondent contends that she did not have an appeal of right from the trial court's assumption of jurisdiction pursuant to MCR 3.993(A)(1).

Respondent's argument fails because it ignores the fact that MCR 3.993(A)(1) allows for an appeal as of right from "*an order of disposition* . . . removing the minor from the home" (emphasis added). In other words, it is not any order removing a child from the home that is appealable as of right; rather, the order appealed must be an order of disposition. *McCarrick/Lamoreaux*, 307 Mich App at 461-462. Dispositional orders are entered once the trial court assumes jurisdiction. MCR 3.973; *In re Sanders*, 495 Mich 394, 406; 852 NW2d 524 (2014). Further, when the children have been physically removed from the home before the initial dispositional hearing, the trial court is required to review the children's placement at the initial dispositional hearing. MCR 3.973(G)(1); *McCarrick/Lamoreaux*, 307 Mich App at 459. It follows that the initial dispositional order placing the children outside of respondent's home is an "order of disposition . . . removing the child[ren] from the home" and this order was appealable by respondent as of right under MCR 3.993(A)(1). In short, it is this initial dispositional order that was the first order appealable as of right. See *In re Wangler*, 498 Mich 911; 870 NW2d 923 (2015). Because respondent failed to seek direct appeal of this order, she cannot now collaterally attack the trial court's jurisdictional decision. See *Hatcher*, 443 Mich at 444; *SLH*, 277 Mich App at 668 n 11.

In making her jurisdictional argument, respondent also cites *Wangler*, 498 Mich at 911, to support her assertion that her challenge to jurisdiction is not an impermissible collateral attack because this is her first appeal as of right. However, *Wangler* is distinguishable and unhelpful to respondent's position. In *Wangler*, the Court reasoned that the respondent's challenge to jurisdiction was not an impermissible collateral attack because it was "unclear when the trial court issued its initial dispositional order, which is the first order appealable by right," and the trial court "purported to issue dispositional orders without first adjudicating the respondent-

mother."[1] *Id.* The circumstances identified in *Wangler*—i.e., circumstances involving the entry of dispositional orders without a prior adjudication—are subject to challenge during an appeal from an order terminating parental rights. See *In re Kanjia*, 308 Mich App 660, 669-670; 866 NW2d 862 (2014). But, those circumstances are not present in this case. Respondent was adjudicated as an unfit parent before any dispositional orders were issued and, as an adjudicated parent represented by counsel, she was free to appeal the initial dispositional order as of right. See *Collier*, 314 Mich App at 575 n 10; *Kanjia*, 308 Mich App at 669-670. Thus, her attack on jurisdiction does not fall within an exception to the general rule that jurisdiction cannot be collaterally attacked on appeal from an order terminating parental rights. See *Kanjia*, 308 Mich App at 669-670. Accordingly, we will not consider her jurisdictional arguments.

II. REUNIFICATION EFFORTS

Respondent next argues that reversal is required because petitioner failed to accommodate her intellectual disability and mental illness in its provision of reunification services. We disagree.

The Americans with Disabilities Act ("ADA"), 42 USC 12101 *et seq*., requires petitioner to reasonably accommodate a disabled parent in the provision of services to achieve reunification and avoid termination of parental rights. *In re Hicks/Brown*, 500 Mich 79, 86; 893 NW2d 637 (2017), citing 42 USC 12132 and 25 CFR 35.130(b)(7). Petitioner's obligations under the ADA dovetail with its affirmative duty under Michigan's Probate Code "to make reasonable efforts to reunify a family before seeking termination of parental rights." *In re Hicks/Brown*, 500 Mich at 85-86; citing MCL 712A.18f(3)(b) and (c); MCL 712A.19a(2). Whether petitioner made reasonable efforts to reunify the family before seeking termination involves findings of fact, which we review for clear error. See *In re Fried*, 266 Mich App 535, 542; 702 NW2d 192 (2005).

Failure to make reasonable efforts toward reunification may prevent petitioner from establishing statutory grounds for termination. *In re Newman*, 189 Mich App 61, 65-68; 472

[1] Respondent also relies heavily on *In re Guido-Seger*, unpublished opinion of the Court of Appeals, issued February 7, 2017 (Docket No. 333529), held in abeyance by *In re Guido-Seger*, 896 NW2d 8 (Mich 2017). In *Guido-Seger*, relying on *Wangler*, this Court considered a due process challenge to the respondent's plea on appeal from termination of the respondent's parental rights, reasoning that a collateral attack on the assumption of jurisdiction "may be permissible when 'the manner in which the trial court assumed jurisdiction violated the [respondent's] due process rights.' " *Id.* at 2, quoting *Wangler*, 498 Mich at 911. *Guido-Seger* is unpublished and thus nonbinding. MCR 7.215(J)(1). Further, while the quoted language in *Guido-Seger* appears in *Wangler*, the quoted language relates to the merits of the respondent's due process challenge in *Wangler* and not the threshold question of whether the jurisdictional challenge was an impermissible collateral attack. See *Wangler*, 498 Mich at 911 ("As to the merits of the respondent-mother's challenge . . . ."). Contrary to *Guido-Seger*, we do not read *Wangler* as authorizing all due process challenges to jurisdiction on an appeal from an order terminating parental rights.

NW2d 38 (1991). However, "[w]hile the [petitioner] has a responsibility to expend reasonable efforts to provide services to secure reunification, there exists a commensurate responsibility on the part of respondents to participate in the services that are offered." *In re Frey*, 297 Mich App 242, 248; 824 NW2d 569 (2012). After the children come within the jurisdiction of the court, "a parent, whether disabled or not, must demonstrate that she can meet their basic needs before they will be returned to her care." *In re Terry*, 240 Mich App 14, 28; 610 NW2d 563 (2000).

In this case, petitioner provided respondent with referrals for psychological and psychiatric evaluations, specialized parenting classes, a parent partner, infant mental health services involving one-on-one assistance in responding to her child, housing resources, supervised parenting time, bus tickets for transportation, and four referrals for individual therapy. Respondent concedes that numerous services were offered, but she characterizes these offerings as a "cookie cutter" treatment plan, and she asserts that she was entitled to a modification of the services and programs offered in light of her cognitive difficulties and mental illness.[2] See *In re Hicks/Brown*, 500 Mich at 86 ("[R]eunification cannot be reasonable under the Probate Code if the Department has failed to modify its standard procedures in ways that are reasonably necessary to accommodate a disability under the ADA."). However, contrary to respondent's characterization of the services provided, the trial court determined that "[t]he level of services offered to [respondent] have been appropriate and reasonable with respect to [respondent's] needs." In evaluating the reasonableness of petitioner's efforts, the trial court also emphasized respondent's failure to participate in services, her uncooperative and even threatening behavior, and her failure to benefit from the services that were offered.

The trial court's findings were not clearly erroneous. In terms of respondent's mental illness, petitioner referred respondent for psychological and psychiatric evaluations as well as individual counseling. Respondent now asserts that these "standard" mental health referrals were inadequate because her mental illness was misdiagnosed and the various mental health evaluations were inconsistent. However, the fact remains that petitioner provided respondent with referrals for evaluation and treatment by mental health professionals. We see no basis for

[2] Respondent did not raise this argument when the service plan was "adopted or soon afterward," and under this Court's precedent, failure to raise an ADA challenge to the service plan when it is "adopted or soon afterward" results in a forfeiture of the issue. *Terry*, 240 Mich App at 26. The Michigan Supreme Court has indicated that it is "skeptical" of the "categorical rule" in *Terry*, though the Supreme Court has not decided what measures are required to preserve an ADA challenge in child protective proceedings or when an ADA objection must be raised to be timely. See *In re Hicks/Brown*, 500 Mich at 88. In this case, during the course of the proceedings there were general discussions regarding services and references to specialized services such as the "NSO Spin Program" for parents with developmental disabilities; but, respondent did not actually argue that petitioner was obligated to provide specialized services—or that petitioner had failed to provide appropriate services—until closing argument at the termination hearing. While we question whether the issue was timely raised, we will nevertheless consider the matter because it was addressed by the trial court and neither petitioner nor the children's guardian ad litem raised the timeliness concern in the trial court. See *id.* at 89.

concluding that petitioner's decision to entrust respondent's mental health treatment to qualified professionals was unreasonable. Instead, the record is clear that respondent had the opportunity to participate in counseling and other mental health services to address her mental health issues, but she failed to avail herself of those opportunities. Indeed, in the trial court, she denied that she had any mental health issues and she stated that she only went to therapy because it was "required." On this record, respondent's claim that the mental health services offered were inadequate is without merit. See *In re Frey*, 297 Mich App at 247-248.

With regard to respondent's intellectual disability, respondent asserts that she was entitled to modifications of her treatment plan; but, she does not fully explain what reasonable accommodations should have made and it is not apparent that the services provided were insufficient.[3] As noted, respondent received referrals for a variety of services to address her mental health issues and parenting skills. There is no indication that respondent was denied any services available to parents with greater cognitive abilities. Cf. *In re Terry*, 240 Mich App at 27. Respondent was appointed a guardian ad litem, who went through the parent agency agreement with respondent so that she was "fully informed." Further, respondent was offered more individualized services, such as specialized parenting classes and opportunities for one-on-one assistance such as a parent partner and infant mental health services. Respondent now claims that something more was required; but, as discussed, petitioner's obligation was to provide reasonable services and make reasonable accommodations. *In re Hicks/Brown*, 500 Mich at 85-86; *In re Terry*, 240 Mich App at 27. As found by the trial court, petitioner made reasonable efforts, but respondent failed to avail herself of those opportunities. She was terminated from services for being uncooperative and threatening, she missed numerous parenting time opportunities, and she failed to address her mental health problems. Given her lack of participation, there is no indication that she would have "fared better" with other services and thus we cannot conclude that respondent's failure to succeed is attributable to some failing by respondent. See *In re Fried*, 266 Mich App at 542-543. In other words, given respondent's failure to participate to the numerous opportunities provided, we are not persuaded that petitioner can be considered unreasonable in failing to provide additional or different services. Overall, the trial court did not clearly err by concluding that petitioner fulfilled its obligation to make reasonable efforts toward reunification.

III. STATUTORY GROUNDS FOR TERMINATION

Respondent argues that the trial court erred in finding the existence of a statutory ground for termination. We disagree.

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[3] In terms of respondent's cognitive abilities, the record shows that respondent had an IQ of 59 and a verbal comprehension score of 63, both of which are in the "extremely low range." Early in the case, respondent was appointed a guardian ad litem and there was discussion of the need for specialized services such as a parenting program for developmentally disabled adults. Clearly, petitioner and the trial court were aware of respondent's intellectual and cognitive difficulties. Cf. *In re Hicks/Brown*, 500 Mich at 87 n 5.

In an action to terminate parental rights, the petitioner must prove by clear and convincing evidence that at least one statutory ground for termination in MCL 712A.19b(3) exists. *In re Trejo*, 462 Mich 341, 355; 612 NW2d 407 (2000). The trial court's decision is reviewed for clear error. MCR 3.977(K); *In re Trejo*, 462 Mich at 356-357. "A finding is clearly erroneous if, although there is evidence to support it, this Court is left with a definite and firm conviction that a mistake has been made." *In re Hudson*, 294 Mich App 261, 264; 817 NW2d 115 (2011). "[T]his Court accords deference to the special opportunity of the trial court to judge the credibility of the witnesses." *In re Fried*, 266 Mich App at 541.

The trial court terminated respondent's parental rights pursuant to MCL 712A.19b(3)(c)(*i*), (c)(*ii*), (g), and (j), which authorize termination under the following circumstances:

> (c) The parent was a respondent in a proceeding brought under this chapter, 182 or more days have elapsed since the issuance of an initial dispositional order, and the court, by clear and convincing evidence, finds either of the following:
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> (*i*) The conditions that led to the adjudication continue to exist and there is no reasonable likelihood that the conditions will be rectified within a reasonable time considering the child's age.
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> (*ii*) Other conditions exist that cause the child to come within the court's jurisdiction, the parent has received recommendations to rectify those conditions, the conditions have not been rectified by the parent after the parent has received notice and a hearing and has been given a reasonable opportunity to rectify the conditions, and there is no reasonable likelihood that the conditions will be rectified within a reasonable time considering the child's age.
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> * * *
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> (g) The parent, without regard to intent, fails to provide proper care or custody for the child and there is no reasonable expectation that the parent will be able to provide proper care and custody within a reasonable time considering the child's age.
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> * * *
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> (j) There is a reasonable likelihood, based on the conduct or capacity of the child's parent, that the child will be harmed if he or she is returned to the home of the parent.

With respect to § 19b(3)(c)(*i*), "[t]his statutory ground exists when the conditions that brought the children into foster care continue to exist despite time to make changes and the opportunity to take advantage of a variety of services." *In re White*, 303 Mich App 701, 710; 846 NW2d 61 (2014) (quotation marks, ellipses, and citation omitted). In this case, the conditions leading to adjudication were the injury to the youngest child stemming from respondent's improper supervision, the poor physical state of the home, and respondent's mental

illness, which interfered with her ability to properly care for the children. The trial court did not clearly err by concluding that respondent failed to rectify these conditions and that there was no reasonable expectation she would do so in a reasonable time considering the children's ages. In particular, although respondent eventually completed a parenting class, respondent failed to demonstrate that she learned adequate parenting skills. She appeared disinterested during visitation and she failed to redirect and interact with the children. Respondent also failed to recognize her deficiencies as a parent, and she did not appear willing to learn. She screamed at Samantha Burks, the foster care worker assigned to the family, when Burks offered suggestions and critiques about the visitations. And, respondent testified that the parenting class did not teach her anything that she did not already know. Respondent also did not make meaningful progress in managing her mental illness. While this case was ongoing, she had three periods of hospitalization. She was inconsistent with her medication. Although respondent had four evaluations over the course of this proceeding, at the termination hearing, she denied that she had mental health issues. In addition, respondent did not establish suitable housing for her children. Although she informed Burks that she was in the process of repairing a house, the house still needed work and respondent by no means established suitable housing for the children. Given the length of time the case had been ongoing, respondent's failure to benefit from services, and respondent's failure to rectify the conditions leading to adjudication, the trial court did not clearly err by finding that grounds for termination existed under § 19b(3)(c)(*i*). See *Fried*, 266 Mich App at 541-542.

In contrast, respondent contends that she resolved the conditions leading to the adjudication by completing all components of her treatment plan. She emphasizes that she completed a parenting class that she found on her own, without petitioner's assistance. She also states that she visited her children frequently in their relative placements. However, while respondent may have made some effort, it was not enough to simply participate in services. A parent must benefit from the services offered. *In re TK*, 306 Mich App 698, 711; 859 NW2d 208 (2014). The record does not show that respondent benefited from services so as to rectify the conditions leading to the adjudication.

Respondent also emphasizes that she took the initiative to find another mental health provider when she failed to receive a correct diagnosis and appropriate treatment from Northeast Guidance Center. She cites documentation from Team Wellness stating that she attended therapy and was making "favorable progress according to her treatment plan." The letter from Team Wellness made only a general and conclusory statement of respondent's progress; it provided no information on respondent's treatment and diagnosis. The trial court did not clearly err by assigning greater weight to respondent's own testimony that she did not have a mental illness, that she did not believe she needed treatment, and that she complied with treatment only because it "was required." Thus, notwithstanding respondent's recent treatment at Team Wellness, the trial court did not clearly err by concluding that respondent's mental health concerns remained unresolved. Further, the record shows that respondent failed to grasp the disruptive effect of her mental illness on her children. Despite making some belated efforts to participate in treatment, she persisted in her belief that she did not need treatment. She maintained that she could care for all four of her children without assistance, despite her failure to care for herself and her failure to make progress in treatment and in providing a home. The evidence supports termination of her parental rights under § 19b(3)(c)(*i*).

The evidence supporting termination under § 19b(3)(c)(*i*) also supports termination under §§ 19b(3)(g) and (j). Respondent was unable to provide proper care for her children, and there was no reasonable expectation that she would be able to do so within a reasonable time considering the children's ages. Section 19b(3)(g). At the start of the proceedings, respondent's four children were living in an unclean, chaotic, and inadequate home. Although the cause of the youngest child's burn was not determined, it occurred because respondent left him unsupervised with his siblings. Respondent failed to consistently attend and benefit from services. She had no insight into her shortcomings as a parent or her need for mental health treatment. The youngest child was physically harmed due to respondent's lack of supervision, and considering respondent's lack of progress in developing adequate parenting skills, the children were reasonably likely to be harmed again if they were returned to her care. Section 19b(3)(j). Overall, the trial court did not clearly err by finding clear and convincing evidence to support termination of respondent's parental rights under §§ 19b(3)(c)(*i*), (g) and (j).[4]

IV. BEST INTERESTS

Finally, respondent also argues that the trial court erred in finding that termination of her parental rights was in the children's best interests. Respondent contends that the trial court's best interests determination was deficient because the trial court failed to consider the children individually and failed to articulate why termination was appropriate when the children were placed with relatives, particularly when the relatives supported respondent and the option of a guardianship.

Once a statutory ground for termination is established, the trial court shall order termination of parental rights if it finds, by a preponderance of the evidence, that termination is in the child's best interests. MCL 712A.19b(5); *In re Moss*, 301 Mich App 76, 90; 836 NW2d 182 (2013). The trial court's best-interest decision is reviewed for clear error. *In re Brown/Kindle/Muhammad*, 305 Mich App 623, 637; 853 NW2d 459 (2014). As noted, "[a] finding is clearly erroneous if, although there is evidence to support it, this Court is left with a definite and firm conviction that a mistake has been made." *In re Hudson*, 294 Mich App at 264.

To determine whether termination of parental rights is in a child's best interests, the trial court should weigh all the available evidence and consider a wide variety factors. *In re White*, 303 Mich App at 713. Relevant factors may include "the child's bond to the parent, the parent's parenting ability, the child's need for permanency, stability, and finality, and the advantages of a foster home over the parent's home." *Id*. (quotation marks and citation omitted). "The trial court may also consider . . . the parent's compliance with his or her case service plan, the parent's visitation history with the child, the children's well-being while in care, and the possibility of adoption." *Id*. at 714. When evaluating a child's best interests, the focus must be on the child,

[4] The trial court did not specify what other conditions existed to support termination under § 19b(3)(c)(*ii*), and the minor children concede on appeal that termination was not justified under § 19b(3)(c)(*ii*). However, because termination was justified under §§ 19b(3)(c)(*i*), (g) and (j), any error in relying on § 19b(3)(c)(*ii*) as an additional ground for termination was harmless. *In re Powers*, 244 Mich App 111, 118-119; 624 NW2d 472 (2000).

not the parent, *Moss*, 301 Mich App at 87; and, the trial court has an obligation to consider the best interests of each child individually, *In re Olive/Metts Minors*, 297 Mich App 35, 42; 823 NW2d 144 (2012). Notably, the trial court must specifically consider a child's relative placement when determining whether termination of parental rights is in a child's best interests. *Id*. at 43. "[A] child's placement with relatives weighs against termination under MCL 712A.19a(6)(a)." *Id.*

> Although the trial court may terminate parental rights in lieu of placement with relatives if it finds that termination is in the child's best interests, the fact that the children are in the care of a relative at the time of the termination hearing is an "explicit factor to consider in determining whether termination was in the children's best interests[.]" A trial court's failure to explicitly address whether termination is appropriate in light of the children's placement with relatives renders the factual record inadequate to make a best-interest determination and requires reversal. [*Id*. (internal citation omitted).]

In this case, in conducting its best interests analysis, the trial court acknowledged that the children were each placed with a relative. However, the trial court's findings were inadequate to support the conclusion that termination was in the children's best interests despite this relative placement. Specifically, the trial court noted that the relatives were willing to adopt; and, emphasizing the children's need for permanency, the trial court reasoned that the children should not be made to "linger any longer in foster care." However, the trial court's analysis failed to adequately address the relatives' willingness to provide guardianship and to explain why termination, as opposed to a guardianship, was in the best interests of these children. On several occasions throughout these proceedings, the trial court asked the parties to address whether guardianship might be a suitable option for the children. Indeed, at various times during course of the proceedings, the foster care worker, the relatives, respondent, the children's attorney, and even the trial court indicated that guardianship would be a viable option, at least for the older children. Respondent's family's strong support was referenced in numerous instances, and respondent's mother, who had care of one of the children, indicated that she would prefer guardianship because she did not want respondent's parental rights terminated. Although petitioner presented substantial evidence that respondent neglected her children and that she could not independently care for her children, there was no evidence that she actively harmed them or that they would be harmed if she maintained a relationship with the children while a guardianship was imposed. See *In re Mason*, 486 Mich 142, 168-169; 782 NW2d 747 (2010). Cf. *In re Schadler*, 315 Mich App 406, 411; 890 NW2d 676 (2016) (finding termination was in child's best interests notwithstanding relative placement where the parent inflicted physical and emotional injury). Instead, the only reason offered against guardianship was that guardianship is usually intended as a short-term option, not as a long-term plan when the children are very young and the guardianship will extend over several years. However, the trial court failed to make an individualized determination regarding whether guardianship, as opposed to termination, would be an appropriate option for any or all of the children in this particular case. See *In re R J K*, 501 Mich 867; 901 NW2d 398 (2017). On the facts of this case, given the relatives' willingness to provide guardianship and given that placement with a relative is a factor that weighs against termination, we are persuaded that the trial court's best interests determination should be vacated and the case remanded for a determination of the children's best interests in light of fact that the children are placed with relatives who are willing to provide guardianship. Cf. *id*.

Affirmed in part, vacated in part, and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ David H. Sawyer
/s/ Joel P. Hoekstra
/s/ Christopher M. Murray